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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,700	02/27/2004	James Floyd Ferguson	JF2003	9285

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LUBBOCK, TX 79401

EXAMINER

PICKETT, JOHN G

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 04/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/789,700

Applicant(s)

FERGUSON, JAMES FLOYD

Examiner

Gregory Pickett

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 February 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

1. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Steiner (US 5,042,193) in view of Cho (US 6,062,385).

Steiner discloses a fishing tackle utility box with two boxes in back-to-back relationship (see Figures 2 and 5).

Cho discloses a utility box with an integral main body 2. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the boxes of Steiner in one piece in order to keep any gear that is retained in the individual compartments together. It has been held that forming in one piece an article

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which has formerly been formed in two pieces and put together involves only routine skill in the art. *Howard v. Detroit Stove Works*, 150 U.S. 164 (1893).

As such, the box of Steiner-Cho discloses a tubular main body **14, 15 & 16**, a center partition **13** bisecting the tubular main body between two open ends, a network of partitions **22, 23 & 24**, a handle **40**, two end plates **12**, hinge **18**, and closure means **20**.

2. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Steiner-Cho as applied to claim 1 above, and further in view of Rathbun (US 2,046,133).

Steiner-Cho discloses the claimed invention except for the octagonal shape.

Rathbun discloses an octagonal-shaped box. It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the box of Steiner-Cho with an octagonal shape in order to reduce the sharpness of the corners. A change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47. A change in aesthetic (ornamental) design generally will not support patentability. *In re Seid*, 73 USPQ 431.

3. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Steiner-Cho-Rathbun as applied to claim 2 above, and further in view of Carter (Des. 379,562).

Steiner-Cho-Rathbun discloses central cavity **21**. Steiner-Cho-Rathbun discloses the claimed invention except for the plurality of horizontal trays.

Carter discloses a plurality of horizontal trays within a cavity (see Figure 2). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the box of Steiner-Cho-Rathbun with a plurality of horizontal trays as taught by Carter in order to store a large number of small, loose items.

4. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Steiner-Cho-Rathbun as applied to claim 2, or Steiner-Cho-Rathbun-Carter as applied to claim 3 above, and further in view of Straface (US 6,849,038).

Steiner-Cho-Rathbun and Steiner-Cho-Rathbun-Carter disclose the claimed invention except that they use a clasp instead of a hook-and-loop closure means. Straface shows that a hook-and-loop closure means was an equivalent structure known in the art. Therefore, because these two closure means were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute the hook-and-loop of Straface for the clasp of Steiner.

Conclusion


5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

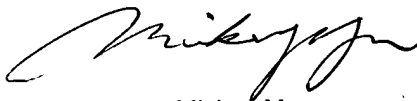
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory Pickett whose telephone number is 571-272-4560. The examiner can normally be reached on Mon-Fri, 11:30 AM - 8:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Greg Pickett
Examiner
15 April 2005


Mickey Yu
Supervisory Patent Examiner
Group 3700